

**EMPLOYER STATUS DETERMINATION**  
**Kansas City Transportation Company LLC**

**JUL 17 2006**

This is the determination of the Railroad Retirement Board regarding the status of Kansas City Transportation Company LLC (KCTC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

Information regarding KCTC was provided by attorney Ronald A. Lane. Information was also found in Surface Transportation Board (STB) Decision, Finance Docket No. 34830. KCTC was organized on January 9, 2006 and began operations on March 1, 2006. KCTC was set up to provide switching services for Kansas City Terminal Railway Company, a covered employer under the Acts (B.A. No. 3798), its parent company, and for certain other railroads. KCTC leases certain of its tracks from Kansas City Terminal Railway and other tracks from Kansas City Southern Railway Company pursuant to an assignment of operating rights from Kaw River Railroad, Inc., a covered employer under the Acts (B.A. NO. 4812). KCTC operations involve providing services to industries along the rail lines and interchanging with Union Pacific; BNSF; Norfolk Southern; Iowa, Chicago and Eastern Railroad Corporation; and Kansas City Southern. KCTC has contracted with Kaw River Railroad to operate KCTC's rail lines. In STB Finance Docket No. 34830 entered on March 14, 2006, the STB indicated that KCTC had acquired approximately 25.73 miles of rail line.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making

this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board. We pointed out in our decision in the case of Railroad Ventures that an entity that is affiliated through common ownership with other for-profit carriers will be presumed to have as a primary business purpose to profit from the ownership of the rail line. We find that the presumption applies in this case to KCTC which is owned by Kansas City Terminal Railway Company, a covered employer under the Acts.

The evidence of record establishes that KCTC is a carrier operating in interstate commerce. Accordingly, it is determined that KCTC is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of March 1, 2006, the date as of which it commenced operations.

Original signed by:

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